

Department of Justice

§ 79.45

by means of an affidavit described in § 79.4(c)(4).

§ 79.45 Proof of primary lung cancer.

(a) In determining whether a claimant developed primary lung cancer following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed primary lung cancer must be supported by medical documentation. To prove that a claimant developed primary lung cancer, the claimant or beneficiary may submit any form of medical documentation specified in paragraph (e) of this section. In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources identified in paragraphs (b), (c), and (d) of this section.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (including NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. (In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of primary lung cancer.)

(c) If a claimant was diagnosed as having primary lung cancer in Arizona, Colorado, Nevada, New Mexico, Utah, or Wyoming, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Program to contact the appropriate state cancer or tumor registry, the Program will, where appropriate, request the relevant information from that registry and will review records that it obtains from the registry. (In cases where the claimant is deceased, the Program will accept as proof of medical condition verification from the

state cancer or tumor registry that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of primary lung cancer.)

(d) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers, and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. (In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of primary lung cancer.)

(e)(1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted primary lung cancer. Such documentation will be most useful where it contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities at the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty:

(i) Pathology report of tissue biopsy, including, but not limited to, specimens obtained by any of the following methods:

- (A) Surgical resection;
- (B) Endoscopic endobronchial or transbronchial biopsy;
- (C) Bronchial brushings and washings;
- (D) Pleural fluid cytology;
- (E) Fine needle aspirate;
- (F) Pleural biopsy; or
- (G) Sputum cytology;
- (ii) Autopsy report;
- (iii) Bronchoscopy report;
- (iv) One of the following summary medical reports:

(A) Physician summary report;

- (B) Hospital discharge summary report;
- (C) Operative report;
- (D) Radiation therapy summary report; or
- (E) Oncology summary or consultation report;
- (v) Reports of radiographic studies, including:
 - (A) X-rays of the chest;
 - (B) Chest tomograms;
 - (C) Computer-assisted tomography (CT); or
 - (D) Magnetic resonance imaging (MRI); or
- (vi) Death certificate, provided that it is signed by a physician at the time of death.

§ 79.46 Proof of nonmalignant respiratory disease.

(a) In determining whether a claimant developed a nonmalignant respiratory disease following pertinent employment as a miner, the Assistant Director shall resolve all reasonable doubt in favor of the claimant. A conclusion that a claimant developed a nonmalignant respiratory disease must be supported by medical documentation. In cases where the claimant is deceased, the claimant's beneficiary may submit any form of medical documentation specified in paragraph (d)(1) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). A living claimant must at a minimum submit the medical documentation required in paragraph (d)(3) of this section, and for proof of cor pulmonale must also submit one or more forms of documentation specified in paragraph (d)(2). In all cases, the Program will review submitted medical documentation, and will, in addition and where appropriate, review any pertinent records discovered within the sources referred to in paragraphs (b) and (c) of this section. With respect to a deceased claimant, the Program will treat as equivalent to a diagnosis of pulmonary fibrosis any diagnosis of "restrictive lung disease" made by a physician employed by the Indian Health Service.

(b) Where appropriate, the Radiation Exposure Compensation Program will search the records of the PHS (includ-

ing NIOSH), created or gathered during the course of any health study of uranium workers conducted or being conducted by these agencies, to determine whether those records contain proof of the claimant's medical condition. In cases where the claimant is deceased, the Program will accept as proof of medical condition the verification of the PHS or NIOSH that it possesses medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a nonmalignant respiratory disease.

(c) If medical records regarding the claimant were gathered during the course of any federally supported, health-related study of uranium workers and the claimant or eligible surviving beneficiary submits with the claim an Authorization To Release Medical or Other Information that authorizes the Program to contact the custodian of the records of the study to determine if proof of the claimant's medical condition is contained in the records of the study, the Program will, where appropriate, request such records from that custodian and will review records that it obtains from the custodian. In cases where the claimant is deceased, the Program will accept as proof of the claimant's medical condition such medical records or abstracts of medical records containing a verified diagnosis of a nonmalignant respiratory disease.

(d) (1) A claimant or beneficiary may submit any of the following forms of medical documentation in support of a claim that the claimant contracted a nonmalignant respiratory disease, including pulmonary fibrosis, fibrosis of the lung, cor pulmonale related to fibrosis of the lung, silicosis, and pneumoconiosis:

- (i) Pathology report of tissue biopsy;
- (ii) Autopsy report;
- (iii) If an x-ray exists, the x-ray and interpretive reports of the x-ray by a maximum of two NIOSH certified "B" readers classifying the existence of disease of category 1/0 or higher according to a 1989 report of the International Labor Office (known as the "ILO"), or subsequent revisions;
- (iv) If no x-rays exist, an x-ray report;
- (v) Physician summary report;